

108TH CONGRESS
1ST SESSION

S. 202

To amend the Internal Revenue Code of 1986 to allow as a deduction in determining adjusted gross income the deduction for expenses in connection with services as a member of a reserve component of the Armed Forces of the United States, to allow employers a credit against income tax with respect to employees who participate in the military reserve components, and to allow a comparable credit for participating reserve component self-employed individuals, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2003

Mr. DEWINE (for himself, Mr. MCCAIN, Mr. LIEBERMAN, Mr. SHELBY, Mr. MILLER, Mrs. HUTCHISON, Ms. LANDRIEU, Mr. LOTT, Mr. INOUE, and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to allow as a deduction in determining adjusted gross income the deduction for expenses in connection with services as a member of a reserve component of the Armed Forces of the United States, to allow employers a credit against income tax with respect to employees who participate in the military reserve components, and to allow a comparable credit for participating reserve component self-employed individuals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Reserve Component
 5 Tax Assistance Act of 2003”.

6 **SEC. 2. DEDUCTION OF CERTAIN EXPENSES OF MEMBERS**
 7 **OF THE RESERVE COMPONENT.**

8 (a) DEDUCTION ALLOWED.—Section 162 of the In-
 9 ternal Revenue Code of 1986 (relating to certain trade or
 10 business expenses) is amended by redesignating subsection
 11 (p) as subsection (q) and inserting after subsection (o) the
 12 following new subsection:

13 “(p) TREATMENT OF EXPENSES OF MEMBERS OF
 14 RESERVE COMPONENT OF ARMED FORCES OF THE
 15 UNITED STATES.—For purposes of subsection (a)(2), in
 16 the case of an individual who performs services as a mem-
 17 ber of a reserve component of the Armed Forces of the
 18 United States at any time during the taxable year, such
 19 individual shall be deemed to be away from home in the
 20 pursuit of a trade or business during any period for which
 21 such individual is away from home in connection with such
 22 services.”.

23 (b) DEDUCTION ALLOWED WHETHER OR NOT TAX-
 24 PAYER ELECTS TO ITEMIZE.—Section 62(a)(2) of the In-
 25 ternal Revenue Code of 1986 (relating to certain trade and

1 business deductions of employees) is amended by adding
 2 at the end the following new subparagraph:

3 “(E) CERTAIN EXPENSES OF MEMBERS OF
 4 RESERVE COMPONENTS OF THE ARMED FORCES
 5 OF THE UNITED STATES.—The deductions al-
 6 lowed by section 162 which consist of expenses
 7 paid or incurred by the taxpayer in connection
 8 with the performance of services by such tax-
 9 payer as a member of a reserve component of
 10 the Armed Forces of the United States.”.

11 (c) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to amounts paid or incurred in tax-
 13 able years beginning after December 31, 2002.

14 **SEC. 3. CREDIT FOR EMPLOYMENT OF RESERVE COMPO-**
 15 **NENT PERSONNEL.**

16 (a) IN GENERAL.—Subpart D of part IV of sub-
 17 chapter A of chapter 1 of the Internal Revenue Code of
 18 1986 (relating to business-related credits) is amended by
 19 adding at the end the following new section:

20 **“SEC. 45G. RESERVE COMPONENT EMPLOYMENT CREDIT.**

21 “(a) GENERAL RULE.—For purposes of section 38,
 22 the reserve component employment credit determined
 23 under this section is an amount equal to the sum of—

24 “(1) the employment credit with respect to all
 25 qualified employees of the taxpayer, plus

1 “(2) the self-employment credit of a qualified
2 self-employed taxpayer.

3 “(b) EMPLOYMENT CREDIT.—For purposes of this
4 section—

5 “(1) IN GENERAL.—The employment credit
6 with respect to a qualified employee of the taxpayer
7 for any taxable year is equal to 50 percent of the
8 amount of qualified compensation that would have
9 been paid to the employee with respect to all periods
10 during which the employee participates in qualified
11 reserve component duty to the exclusion of normal
12 employment duties, including time spent in a travel
13 status had the employee not been participating in
14 qualified reserve component duty. The employment
15 credit, with respect to all qualified employees, is
16 equal to the sum of the employment credits for each
17 qualified employee under this subsection.

18 “(2) QUALIFIED COMPENSATION.—When used
19 with respect to the compensation paid or that would
20 have been paid to a qualified employee for any pe-
21 riod during which the employee participates in quali-
22 fied reserve component duty, the term ‘qualified
23 compensation’ means compensation—

24 “(A) which is normally contingent on the
25 employee’s presence for work and which would

1 be deductible from the taxpayer's gross income
2 under section 162(a)(1) if the employee were
3 present and receiving such compensation, and

4 “(B) which is not characterized by the tax-
5 payer as vacation or holiday pay, or as sick
6 leave or pay, or as any other form of pay for
7 a nonspecific leave of absence, and with respect
8 to which the number of days the employee par-
9 ticipates in qualified reserve component duty
10 does not result in any reduction in the amount
11 of vacation time, sick leave, or other nonspecific
12 leave previously credited to or earned by the
13 employee.

14 “(3) QUALIFIED EMPLOYEE.—The term ‘quali-
15 fied employee’ means a person who—

16 “(A) has been an employee of the taxpayer
17 for the 21-day period immediately preceding the
18 period during which the employee participates
19 in qualified reserve component duty, and

20 “(B) is a member of the Ready Reserve of
21 a reserve component of an Armed Force of the
22 United States as defined in sections 10142 and
23 10101 of title 10, United States Code.

24 “(c) SELF-EMPLOYMENT CREDIT.—

1 “(1) IN GENERAL.—The self-employment credit
2 of a qualified self-employed taxpayer for any taxable
3 year is equal to 50 percent of the excess, if any, of—

4 “(A) the self-employed taxpayer’s average
5 daily self-employment income for the taxable
6 year over

7 “(B) the average daily military pay and al-
8 lowances received by the taxpayer during the
9 taxable year, while participating in qualified re-
10 serve component duty to the exclusion of the
11 taxpayer’s normal self-employment duties for
12 the number of days the taxpayer participates in
13 qualified reserve component duty during the
14 taxable year, including time spent in a travel
15 status.

16 “(2) AVERAGE DAILY SELF-EMPLOYMENT IN-
17 COME AND AVERAGE DAILY MILITARY PAY AND AL-
18 LOWANCES.—As used with respect to a self-em-
19 ployed taxpayer—

20 “(A) the term ‘average daily self-employ-
21 ment income’ means the self-employment in-
22 come (as defined in section 1402) of the tax-
23 payer for the taxable year divided by the dif-
24 ference between—

25 “(i) 365, and

1 “(ii) the number of days the taxpayer
 2 participates in qualified reserve component
 3 duty during the taxable year, including
 4 time spent in a travel status, and

5 “(B) the term ‘average daily military pay
 6 and allowances’ means—

7 “(i) the amount paid to the taxpayer
 8 during the taxable year as military pay
 9 and allowances on account of the tax-
 10 payer’s participation in qualified reserve
 11 component duty, divided by

12 “(ii) the total number of days the tax-
 13 payer participates in qualified reserve com-
 14 ponent duty, including time spent in travel
 15 status.

16 “(3) QUALIFIED SELF-EMPLOYED TAXPAYER.—
 17 The term ‘qualified self-employed taxpayer’ means a
 18 taxpayer who—

19 “(A) has net earnings from self-employ-
 20 ment (as defined in section 1402) for the tax-
 21 able year, and

22 “(B) is a member of the Ready Reserve of
 23 a reserve component of an Armed Force of the
 24 United States.

1 “(d) CREDIT IN ADDITION TO DEDUCTION.—The
 2 employment credit provided in this section is in addition
 3 to any deduction otherwise allowable with respect to com-
 4 pensation actually paid to a qualified employee during any
 5 period the employee participates in qualified reserve com-
 6 ponent duty to the exclusion of normal employment duties.

7 “(e) LIMITATIONS.—

8 “(1) MAXIMUM CREDIT.—

9 “(A) IN GENERAL.—The credit allowed by
 10 subsection (a) for the taxable year—

11 “(i) shall not exceed \$7,500 in the ag-
 12 gregate, and

13 “(ii) shall not exceed \$2,000 with re-
 14 spect to each qualified employee.

15 “(B) CONTROLLED GROUPS.—For pur-
 16 poses of applying the limitations in subpara-
 17 graph (A)—

18 “(i) all members of a controlled group
 19 shall be treated as one taxpayer, and

20 “(ii) such limitations shall be allo-
 21 cated among the members of such group in
 22 such manner as the Secretary may pre-
 23 scribe.

24 For purposes of this subparagraph, all persons
 25 treated as a single employer under subsection

1 (a) or (b) of section 52 or subsection (m) or (o)
 2 of section 414 shall be treated as members of
 3 a controlled group.

4 “(2) DISALLOWANCE FOR FAILURE TO COMPLY
 5 WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF
 6 MEMBERS OF THE RESERVE COMPONENTS OF THE
 7 ARMED FORCES OF THE UNITED STATES.—No credit
 8 shall be allowed under subsection (a) to a taxpayer
 9 for—

10 “(A) any taxable year in which the tax-
 11 payer is under a final order, judgment, or other
 12 process issued or required by a district court of
 13 the United States under section 4323 of title 38
 14 of the United States Code with respect to a vio-
 15 lation of chapter 43 of such title, and

16 “(B) the 2 succeeding taxable years.

17 “(3) DISALLOWANCE WITH RESPECT TO PER-
 18 SONS ORDERED TO ACTIVE DUTY FOR TRAINING.—
 19 No credit shall be allowed under subsection (a) to a
 20 taxpayer with respect to any period for which the
 21 person on whose behalf the credit would otherwise be
 22 allowable is called or ordered to active duty for any
 23 of the following types of duty:

24 “(A) active duty for training under any
 25 provision of title 10, United States Code,

1 “(B) training at encampments, maneuvers,
2 outdoor target practice, or other exercises under
3 chapter 5 of title 32, United States Code, or

4 “(C) full-time National Guard duty, as de-
5 fined in section 101(d)(5) of title 10, United
6 States Code.

7 “(f) GENERAL DEFINITIONS AND SPECIAL RULES.—

8 “(1) MILITARY PAY AND ALLOWANCES.—The
9 term ‘military pay’ means pay as that term is de-
10 fined in section 101(21) of title 37, United States
11 Code, and the term ‘allowances’ means the allow-
12 ances payable to a member of the Armed Forces of
13 the United States under chapter 7 of that title.

14 “(2) QUALIFIED RESERVE COMPONENT
15 DUTY.—The term ‘qualified reserve component duty’
16 includes only active duty performed, as designated in
17 the reservist’s military orders, in support of a con-
18 tingency operation as defined in section 101(a)(13)
19 of title 10, United States Code.

20 “(3) NORMAL EMPLOYMENT AND SELF-EM-
21 PLOYMENT DUTIES.—A person shall be deemed to
22 be participating in qualified reserve component duty
23 to the exclusion of normal employment or self-em-
24 ployment duties if the person does not engage in or
25 undertake any substantial activity related to the per-

1 son's normal employment or self-employment duties
2 while participating in qualified reserve component
3 duty unless in an authorized leave status or other
4 authorized absence from military duties. If a person
5 engages in or undertakes any substantial activity re-
6 lated to the person's normal employment or self-em-
7 ployment duties at any time while participating in a
8 period of qualified reserve component duty, unless
9 during a period of authorized leave or other author-
10 ized absence from military duties, the person shall
11 be deemed to have engaged in or undertaken such
12 activity for the entire period of qualified reserve
13 component duty.

14 “(4) CERTAIN RULES TO APPLY.—Rules similar
15 to the rules of subsections (c), (d), and (e) of section
16 52 shall apply for purposes of this section.”.

17 (b) CONFORMING AMENDMENT.—Section 38(b) of
18 the Internal Revenue Code of 1986 (relating to general
19 business credit) is amended—

20 (1) by striking “plus” at the end of paragraph
21 (14),

22 (2) by striking the period at the end of para-
23 graph (15) and inserting “, plus”, and

24 (3) by adding at the end the following new
25 paragraph:

1 “(16) the reserve component employment credit
2 determined under section 45G(a).”.

3 (c) CLERICAL AMENDMENT.—The table of sections
4 for subpart D of part IV of subchapter A of chapter 1
5 of the Internal Revenue Code of 1986 is amended by in-
6 serting after the item relating to section 45F the following
7 new item:

 “Sec. 45G. Reserve component employment credit.”.

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 2002.

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